STATEMENT
OF
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DEPARTMENT OF JUSTICE

BEFORE THE
UNITED STATES SENATE COMMITTEE ON ENERGY
AND NATURAL RESOURCES

ON
A HEARING
REGARDING
S 1052

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Mr. Chairman and Members of the Committee, good morning. My name is Bo Cooper and I am the General Counsel of the Immigration and Naturalization Service of the Department of Justice (INS). I am appearing on behalf of the Administration. Thank you for the opportunity to appear before you today to discuss immigration reform for the Commonwealth of the Northern Mariana Islands (CNMI). We appreciate the Committee's interest in our views.

Through its favorable report in the last Congress of S. 1275, the introduction by Chairman Murkowski and Senators Bingaman and Akaka of S. 1052 (the Northern Mariana Islands Covenant Implementation Act) in the 106th Congress, and its hearings on the urgent immigration, labor and other problems that exist in the CNMI, this Committee has demonstrated a strong bipartisan commitment to improving conditions in this United States territory. The Administration shares this goal, and is committed to working with Congress for the enactment of federal immigration law for the newest member of the American political family.

As you know, S. 1052 is essentially the same bill as the CNMI legislation reported by this Committee in the last Congress as S. 1275, with respect to immigration. A significant difference, of course, is that S. 1052 does not include S. 1275's provision regarding the minimum wage. Although immigration issues are the subject of my testimony today, I should note that the Administration continues to believe that federal minimum wage law needs to be enacted for this new part of our country. The Administration also supports provisions that would condition duty free access to the United States for apparel produced in the islands, and use of the "Made in the USA" label, on the employment of a specified amount of U.S. citizen labor, consistent with the original purposes of the underlying policies.

The Administration expects soon to submit to the Congress its comprehensive legislative proposal addressing the important non-immigration issues not included in S. 1052, as well as immigration reform. We do not expect the immigration provisions in this forthcoming proposal to be substantially different from S. 1052, except for the necessary modifications to S. 1052 discussed in my statement today.

As former S. 1275 was originally drafted by the Administration at the request of Senator Murkowski, that legislation as introduced was entirely consistent with Administration policy toward the CNMI. There is one important difference between the Administration's original immigration proposal for the CNMI and the current S. 1052 -- the preliminary requirements of standards, findings, and provision for judicial review before the INA may take effect -- that causes us serious concern. With the exception of those preliminary requirements, and several other necessary modifications to S. 1052 that the passage of time since 1997 and continued Administration review have revealed, I am pleased on behalf of the Administration today to support S. 1052 if amended, and urge its rapid approval by the Congress.

The CNMI's Immigration Policy is Not Consistent With American Principles

The very serious problems I am here to discuss are not new. They have been worsening for some years. They were not, however, envisioned when the Covenant which united the islands and the United States was negotiated, and went into effect through the free choice of the people of the CNMI, as well as federal approval. In approving the Covenant, the people of the CNMI firmly stated their desire to assume membership in the community of shared values represented by the American flag, including the fundamental values of respect for law, equality, democracy and human rights. Among many other benefits, they were accorded the privilege of U.S.

citizenship. With that privilege come responsibilities to uphold the values the American people hold dear.

The Covenant under which the islands became part of the United States provided for the application of U.S. law in the CNMI. Some laws were to take effect immediately, others later, and yet others as determined by subsequent federal law. The immigration and nationality laws of the United States come within the last category.

To not apply immediately the sovereign power of the United States to control its borders to a local jurisdiction within the United States was an extraordinary step. Congress has established a federal immigration system to serve the interests of the Nation as a whole. The States, territories and other non-federal authorities within the United States normally enjoy no power with respect to the classification of aliens. Federal authority over immigration serves vital national interests, including uniformity of treatment of nonresident foreign visitors, establishing one national policy on immigration to this country, protecting the national security, and ensuring that the Nation speaks with one voice in matters of foreign policy.

Federal immigration authority was not immediately extended to the islands for several reasons. First, the islands were still to be part of a territory that the United States administered as trustee for the United Nations until the trusteeship ended, and the Covenant entered into full force, in November, 1986. Extending U.S. immigration and nationality law before the trusteeship over the islands ended, and the termination accepted by the United Nations, could have given rise to charges from adversary nations that we had divided the territory and annexed part of it.

Second, the CNMI negotiators wished to ensure that their small islands would not be

overwhelmed by large-scale immigration from nearby Asian nations, and feared that this would happen if the Immigration and Nationality Act (INA) were immediately extended to the CNMI. The Ford Administration and Congress agreed to accommodate this concern, for the time being, reserving the right to enact immigration and nationality laws after the end of the U.N. trusteeship at the sole discretion of the national government.

A third reason for not immediately applying the INA was the possibility that a national immigration policy review being conducted at the time might lead to special provisions in federal immigration law to address unique needs of our territories. This did not occur.

It is our strong view, Mr. Chairman, that the time has come to enact federal immigration law for the CNMI. The CNMI has used the lack of such law for exactly the opposite purpose than it originally intended for having the INA not apply, at least temporarily, to the CNMI. Rather than limit immigration, the CNMI has engaged in the massive importation of low-paid temporary alien workers. Alien workers now comprise a majority of the population. The CNMI has attempted to fulfill its original purpose in not having the INA apply, however, by not letting individual workers stay more than a few years, then replacing them with new workers, and not letting most of its labor force become permanent members of the community. Under this system, a majority of the population never have the ability to help determine the public policies under which they live. Moreover, these workers are admitted into the CNMI under indenture contracts that give their employers virtually total control over the terms and conditions of their stay. This in turn makes them unacceptably vulnerable to exploitation and abuse.

A few statistics from the most recent annual report on the Federal-CNMI Initiative on Labor, Immigration and Law Enforcement in the Commonwealth of the Northern Mariana

Islands, issued late in 1998, and from other recent sources, illustrate the magnitude of the problem. The CNMI has experienced explosive, self-imposed population growth during this decade. The population, which was 14,000 in 1975, grew to about 17,000 by 1990, but then exploded to nearly 60,000 by 1995. More than half of the current population are foreign workers. In addition to the large population of indentured alien workers present under authority of CNMI immigration law, an estimated 7,000 undocumented aliens reside in the CNMI.

Nor do the figures for aliens alone suffice to show the impact of the CNMI's immigration policies not just on the archipelago's population, but on the rest of the United States. An increasing percentage of the U.S. citizen population consists of children born in the CNMI to female aliens who would likely be inadmissible to the United States under the INA, but who have been able freely to enter the CNMI. These children are U.S. citizens by birth. They have, of course, all rights pertaining to U.S. citizenship, including the right to live in any part of the United States and, when they come of age, to sponsor their parents for immigration to the United States under the INA. They are also eligible for welfare and other government benefits on the same terms as other citizens.

On Saipan (by far the most populous island), there were, according to CNMI statistics, 32,822 Asian-born aliens in the labor force in February 1999 -- an increase of nearly 10,000 from the 1995 census, demonstrating continuing growth in the alien worker population. These indentured alien workers account for over 90 percent of the private sector workforce. With a virtually unrestricted supply of alien labor, and a resulting de facto wage ceiling at or near the CNMI's low minimum wage of $3.05 per hour, economic growth in the CNMI has not resulted in good private sector jobs for the vast majority of the islands' citizens.

In the CNMI's upside-down economy built on unrestricted importation of low-skilled alien workers to fill permanent positions, few U.S. citizens will work for the CNMI's low minimum wage. It is far below what is required for a living wage, or what would be the prevailing market wage absent the CNMI's immigration policies. Poverty and unemployment rates among locally-born U.S. citizens are high. As last tabulated by the CNMI, the poverty rate for this group was 35 percent and unemployment rate 16 percent. The exception is U.S. citizens who have obtained positions in the public sector. The public sector employs 56 percent of locally-born U.S. citizen workers at wages several times higher than those available in private industry.

Despite the large CNMI bureaucracy and substantial federal financial assistance, CNMI infrastructure and services such as public health care, water, sewers, electricity and garbage disposal are increasingly inadequate to deal with the consequences of such massive immigration. Although the CNMI government has attempted to improve health screening of documented alien guest workers present in the CNMI, communicable diseases, particularly tuberculosis, remain a serious threat.

Symptomatic of this economic and social system is the domestic service situation. According to the 1995 census, the 5,337 households headed by U.S. citizens employed 2,089 alien domestic workers, a rate of domestic service unheard of in the United States, at least in modern times. This domestic service situation did not develop because U.S. citizens in the CNMI were wealthy, but because of their nearly unrestricted access to exploitable low-wage alien labor. In fact, the U.S. Commission on Immigration Reform reported in 1997 that the CNMI government had found it necessary to enact a rule barring Food Stamp recipients from

importing guest workers to work as their domestic servants. Needless to say, we are aware of no other U.S. jurisdiction that has had to address such a problem.

I want to emphasize that the Administration does not contend that the clock in the CNMI should be turned back to the 1970s, or that economic or population growth should not occur there. However, economic growth cannot justify abuse. The CNMI has gone down the wrong road with respect to its immigration policy, and that policy must change.

The developments I have outlined are the result of a CNMI immigration system that is inconsistent with the American values that underlie the INA. Our immigration system favors the controlled and responsible immigration of aliens for permanent residence, leading to eventual full and complete inclusion in the American community through the granting of U.S. citizenship. A central principle of the INA also is the unification of families.

The INA reflects the American tradition of employing U.S. workers in private sector jobs that promote the growth of a middle class, rather than importing and exploiting a rolling stream of alien workers, without permanent immigrant status or family ties, in low-paid permanent positions, most to be kept almost all the time on their employers' premises. The INA's provisions authorizing the employment of nonimmigrant aliens under certain circumstances are designed to ensure that such employment will not adversely affect the wages and working conditions of similarly situated U.S. workers.

The INA also incorporates our obligations under international law -- consistent with the value we place upon human rights -- to give aliens arriving in, or present in the United States the opportunity to obtain protection from torture, or persecution on account of race, religion,

nationality, membership in a particular social group, or political opinion.

The CNMI immigration system is fundamentally at odds with all of these features of U.S. immigration law. The CNMI has no procedure in place under which aliens physically present may make a claim for asylum or withholding of removal on the ground of persecution. Nor does the CNMI have any procedure under which an alien may make a claim under the U.N. Convention against Torture that the alien should not be returned to a place where he or she will be tortured. The lack of refugee and torture protection means that nothing prevents an alien from being removed from the CNMI to a place where he or she will face persecution or torture. This situation in a place that flies the U.S. flag places us at serious risk of violating our international law obligations under the 1967 Refugee Protocol and the Convention against Torture -- obligations which extend to the territory of the CNMI.

In contrast to the INA's prohibition of the importation of temporary nonprofessional alien workers to fill permanent jobs, the CNMI policy has led to the creation of a large, exploitable underclass of aliens (both documented and undocumented) present without family ties, and with no prospect of lawful social and political integration into the community in which they reside.

These fundamental inconsistencies between the CNMI's immigration policy and U.S. interests are further exacerbated by the practical problems faced by a group of small islands that is not a sovereign nation when it tries to exercise the sovereign power to control its borders. First, since the CNMI as a United States territory of course maintains no embassies or consulates abroad, and does not have the interaction a sovereign nation may have with others, it cannot screen applicants prior to their entry. The INS' experience over many years of immigration enforcement has convinced us that a "double-check" system is essential. A double-check system

is one in which (except for temporary visitors from certain nations that the light of experience has shown present a low risk of violation) arriving aliens are screened twice, first by a consular officer overseas and then by an immigration inspector at a port of entry.

The CNMI cannot operate a double-check system. As a result of this structural deficiency, the CNMI is especially vulnerable to the operations of international organized crime, particularly since the CNMI does not have a law enforcement agency that federal authorities have deemed sufficiently secure to be granted access to federal "lookout" information. The vulnerability is not just speculative. The CNMI has been entered by organized crime rings from several countries.

Second, when a local jurisdiction within the United States such as the CNMI attempts to operate its own immigration system, it is virtually impossible for it to avoid entangling itself in foreign relations, since immigration is an international matter that requires frequent consultations and cooperation between national governments. Moreover, the CNMI's negotiation, or attempted negotiation, of "Memoranda of Understanding" with the Philippines and China has intruded into the responsibility of the United States government to conduct the foreign affairs of the Nation. Additionally, the treatment of alien workers in the CNMI has caused irritations in the foreign relations of the United States with Nepal, Bangladesh, Sri Lanka, and the Philippines.

Third, the CNMI does not adequately document the entry of aliens. Despite substantial federal assistance devoted to helping the CNMI try to develop an immigration tracking system (the Labor and Immigration Identification and Document System (LIIDS)) compatible with federal systems, that goal seems as far away as ever. All that has been achieved is the issuance of labor identity cards, without any tie-in to immigration entry and exit.

The response of the CNMI government has been to concede that serious problems and abuses exist while making repeated promises of improvement. These promises have not resulted in meaningful reform, but only in a few largely cosmetic changes that address symptoms rather than the underlying problem, and which are underfunded or contain loopholes and exceptions. The persistent and increasingly severe problems caused by the CNMI's economic and immigration policies, and the lack of any meaningful CNMI response to address them, led President Clinton to conclude in May of 1997 that federal immigration, naturalization and minimum wage laws should be applied to the CNMI, on a reasonable and appropriate phase-in schedule, and with special provisions necessary to avoid disruption to the islands.

Nothing has happened since then that warrants any change in the President's conclusion. The CNMI's indentured alien labor force has continued to increase, despite an ineffectual "moratorium" on their recruitment and importation. No significant improvements have been made in CNMI entry and exit tracking and processing. Mistreatment of indentured alien workers has continued. The system of relying on a large pool of exploited alien labor comprising more than half the population has not changed for the better. As Chairman Murkowski aptly said in his statement introducing S. 1052, the additional year gained by the CNMI as a result of S. 1275 not having been enacted into law in 1998 has expired. It is time for action now.

S. 1052, With Improvements, Would Bring the CNMI Into Conformity with U.S. Immigration Policy While Providing Safeguards Against Economic or Social Disruption

Enacting S. 1052 -- with the few changes we believe are needed to the bill -- would be real immigration reform. It would begin the essential process of returning the CNMI to an immigration system that reflects American values and principles. The bill, with the changes we

recommend, provides a generous implementation and transition period in which to phase out the CNMI's alien worker program. The Administration's original 1997 proposal, and S. 1052, provide up to a ten-year transition period following the one-year implementation period, but we recommend in light of the passage of time since the original proposal -- time that the CNMI has not used to improve this urgent situation -- that an eight-year transition period would be more appropriate and entirely adequate.

Once the preliminary requirements of S. 1052 involving standards and findings regarding the immigration situation in the CNMI are satisfied, the INA can apply, with special modifications, in the CNMI. Under this bill, the preliminary requirements would take a minimum of 18 months, and (depending on the findings) could lead to continued local control of immigration rather than the application of federal immigration law. If and when the INA applies, immigrant and nonimmigrant aliens generally will be visaed, inspected and admitted to the CNMI in the manner applicable in the rest of the United States. CNMI employers will be able to sponsor immigrants in the same way a mainland employer may do. The available nonimmigrant categories include -- among others -- business visitors and tourists, intracompany transferees in managerial positions, persons of exceptional professional or artistic merit and ability, and H-2B temporary workers (especially important for construction and other industries).

The transition provisions include numerous special provisions designed to ease, during the transition period following application of the INA, any potential burden on the CNMI that might result from this change. The INS and the U.S. Department of Labor would administer a reasonable system for the annual allocation of permits to employers who wish to employ temporary alien workers who would not otherwise be eligible for admission under the INA, and

for the entrance of those workers into the CNMI only. This system would ensure that CNMI employers are able to fill their positions, but with much less risk of the exploitation and mistreatment of indentured labor that is characteristic of the current CNMI immigration system.

Other provisions designed to ensure reasonable access by CNMI employers to needed labor include exemption of H-2B temporary workers coming to the CNMI from the overall numerical limitations applicable to H-2B admissions, and authority granted to the Secretary of State and the Attorney General to grant visas to, and to admit into the CNMI, a limited number of employment-based immigrants without regard to normal numerical limitations. This exception for employment-based immigrants would be triggered by a finding by the Secretary of Labor, upon receipt of a recommendation from the CNMI government, that exceptional circumstances exist with respect to the inability of CNMI employers to obtain sufficient work-authorized labor. In order to ensure the continued health of the CNMI hotel industry, this provision may be extended even beyond the end of the transition period for that industry. To prevent abuse of the CNMI immigrant exception by those who have no bona fide intention to reside and work in the CNMI, admissions under this provision will not be valid for permanent residence and employment in the United States, other than the CNMI, for a period of five years.

S. 1052 contains other transition provisions designed to protect the CNMI from potentially adverse consequences that might occur absent such provisions. Aliens lawfully present in the CNMI under authority of CNMI law may remain in the CNMI for their period of admission, or for two years, whichever is less. An alien present in the CNMI under authority of CNMI law, or admitted to the CNMI under the transition program's provisions for special admission of employment-based immigrants or temporary workers, who files an application for

asylum will have his or her application deemed abandoned if the alien leaves the CNMI at any time during which it is pending. Except for immediate relatives and the immigrants who may be admitted into the CNMI under the special transition period employment provisions, aliens may not be granted initial admission as a lawful permanent resident of the United States at a port-of-entry in the CNMI, or at a port-of-entry in Guam for the purpose of immigrating to the CNMI.

In short, we believe that S. 1052 in most respects is a fair bill that appropriately addresses the urgent need for immigration reform in the CNMI with the proper flexibility to ensure that the economy and society of the CNMI are not disrupted by the necessary reform. There are, however, several improvements that need to be made to the bill, in addition to adjusting the transition period from ten to eight years.

S. 1052 Can be Made Even Better

As I previously mentioned, the Department of Justice is very concerned about S. 1052's complex, multistep process for extending the INA to the CNMI. First, the Attorney General would, within 90 days after enactment of S. 1052, publish the minimum standards that she deemed necessary to ensure an effective system of immigration control for the CNMI. The determination of the minimum standards would rest within the sole discretion of the Attorney General, and would not be subject to the rulemaking requirements of the Administrative Procedure Act. The Attorney General's determination of standards would, however, be subject to review by the U.S. Court of Appeals for the D.C. Circuit upon the filing of a timely complaint by the government of the CNMI in that court, with subsequent opportunity to petition the U.S. Supreme Court for its discretionary review. The defendant in the CNMI's lawsuit presumably would be the Attorney General of the United States.

One year after the date of enactment of S. 1052, or 90 days after the resolution of litigation over the minimum standards (whichever is later), the Attorney General, after consultation with the government of the CNMI, would make findings whether the CNMI possesses the institutional capability to administer an effective system of immigration control consistent with the minimum standards, and whether, if so, the CNMI government has demonstrated a genuine commitment to enforce such a system. Once again, the U.S. Court of Appeals for the D.C. Circuit, followed by the U.S. Supreme Court, is designated as the forum for a lawsuit by the CNMI government seeking review of the findings. Once that litigation is finally resolved, up to a ten-year transition program to full INA application would take effect 180 days after the final resolution, if the Attorney General determined that the CNMI government does not have the requisite institutional capability and genuine commitment.

The CNMI government has consistently demonstrated over a period of many years that it has neither the institutional capability nor a genuine commitment to ensure an effective system of immigration control. The INS made detailed findings of fact in the July 1997 Third Annual Report of the Federal-CNMI Initiative on Labor, Immigration & Law Enforcement supporting its conclusion that the CNMI's immigration control system is ineffective, and that conclusion is as accurate today as it was two years ago. The Department of Justice therefore believes that the provisions of S. 1052 that require first the promulgation of standards, and then a delay of at least one year before findings even can be made that could lead to extension of the INA to the CNMI, are unnecessary, and would lead to unwarranted delay and uncertainty. Congress should resolve this issue now, based on the CNMI's proven record over the last decade.

The judicial review provision within the unnecessary preliminary requirements in S. 1052

would allow the CNMI government to tie up in litigation the application of reasonable federal immigration provisions not only once, but twice; first when the Attorney General issues the minimum standards, and second, when the Attorney General issues her findings. Although S. 1052 urges expedited judicial review, the fact remains that two federal court lawsuits over the appropriate standards for CNMI immigration, with the opportunity to petition the Supreme Court for review each time, would be likely to consume several years during which no progress toward CNMI immigration reform could be made. Given the firm opposition of the CNMI government to extending the INA to the CNMI, its use of litigation as a delay tactic would not be unexpected, no matter how reasonable, appropriate, and correct are the Attorney General's standards and findings.

The Department of Justice also seriously questions the appropriateness of judicial review of the CNMI immigration system not just as a source of delay, but as a fundamental matter of the proper scope of the judicial function. The minimum standards for an effective immigration system for the CNMI, and the ability and willingness of the CNMI government to implement them, are policy questions that are not susceptible to judicial determination. Absent any judicially discoverable and manageable standards for deciding them, a reviewing court would be in the position of having either to substitute its immigration policy opinions for those of the political branches of government, or simply to defer to the Attorney General's findings. In neither scenario would there be any useful purpose to such a lawsuit. Alternatively, the court could, despite S. 1052's invitation to involve itself in a dispute between the CNMI government and the United States over the appropriate immigration policy for the islands, properly dismiss the case as a nonjusticiable political question; a correct resolution, but again not a productive use

of time or judicial resources.

The Administration strongly urges the Committee to remove the unnecessary and counterproductive preliminary requirements to promulgate standards and findings, including the judicial review provision that would allow the CNMI government to use litigation as a tactic to delay even further long overdue reforms, and potentially could lead to a court second-guessing and overturning national immigration policy decisions.

Our continued review of proposed legislation also has revealed several ways in which S. 1052 can be improved with minor changes. I will not take up the Committee's time with these now, but we would be glad to work with Committee staff on them, and they also will be included in the Administration's forthcoming proposal.

Recent Developments in the Pacific, and Prospects for Successful INA Enforcement in the CNMI

In his statement in the Congressional Record introducing S. 1052, Chairman Murkowski raised several questions about the INS position toward the CNMI. They are fair questions, and I want to take this opportunity to address them. The statement questioned the INS' commitment to deploy the necessary resources to the CNMI to ensure adequate enforcement and administration of the INA after S. 1052 is enacted into law. The resources available to the INS are, of course, dependent on the appropriations provided by Congress and the INS' statutory authorization to collect fees from users of certain immigration services. The INS is very appreciative of the generous support Congress has provided to its operations, particularly in the last few years, and our agency strives every day to live up to that trust.

The INS commits itself to enforce the INA adequately and fairly in the CNMI just as in

any other part of the United States if that responsibility is entrusted to us, to the fullest extent of the resources available for that task. In planning for the necessary level of immigration services, we would of course be mindful of the difficult challenges posed by extending federal immigration law for the first time to this farflung archipelago beset with immigration and labor problems.

I am not here to tell this Committee that extending the INA to the CNMI is a panacea that will instantly solve the islands' immigration problems. The best efforts of the INS to enforce the INA in the United States have not eliminated the problems of illegal immigration and alien worker exploitation we face here on the mainland, and neither is the INS likely to be able to eliminate them entirely in the CNMI. The INS officers and employees who will be charged with implementing S. 1052 will not have an easy job. However, I am confident that, with the support of Congress and the Administration, their essential task of introducing and enforcing an immigration system that is consistent with U.S. values can be successfully accomplished.

Although bringing the INA for the first time to any jurisdiction is a challenge, the CNMI offers several advantages that would facilitate INS immigration enforcement. The CNMI archipelago is farflung, but the islands are small and only three of them (Saipan, Tinian and Rota) have any substantial population. The CNMI's proximity to Guam would mean that INS operations in the two jurisdictions could complement each other, rather than the current situation in which the CNMI is a source of alien smuggling into Guam. And, although recent developments in the Pacific have shown that the CNMI's relative geographical isolation from major population centers is no barrier to maritime alien smuggling, the CNMI lacks the land borders and short maritime passages (such as the Straits of Florida, or the Mona Passage between

the Dominican Republic and Puerto Rico), or the levels of international commerce, that make border control particularly difficult in other parts of the United States. I note also that S. 1052 appropriately calls for the INS and other agencies charged with INA administration in the CNMI to recruit and hire from among qualified applicants resident in the CNMI, to the extent practicable and consistent with the satisfactory performance of assigned responsibilities.

Our efforts in the CNMI would also build upon the work we have already done there. Although an INS presence in the CNMI under current legal authorities is an entirely inadequate substitute for direct application of the INA, the INS has worked with other agencies, other components of the Department of Justice, and the CNMI government to increase the federal law enforcement presence in the CNMI. Since 1996, the INS has stationed an immigration officer in the CNMI. In addition to technical assistance and liaison in the CNMI, we have provided briefings and training in Guam and Hawaii for CNMI immigration officers on basic inspection techniques, investigative procedures, and the detection of fraudulent documents. We are continuing these efforts. For example, this week we are conducting three days of additional training for CNMI immigration officers in Saipan, and one day in Rota. These and other measures to assist the CNMI will not, however, overcome the fundamental problems of a system incompatible with American values, a local government incapable of handling this responsibility, and the lack of federal authority.

Chairman Murkowski, in his statement in the Congressional Record, also expressed concern about the INS' commitment to devote the necessary resources to immigration enforcement in the CNMI in light of the recent influx of Chinese migrants into Guam. In short, the opinion has been expressed that the Administration's response to the Guam situation, where

federal immigration law already applies, has been inadequate, and that that response does not bode well for extension of federal immigration enforcement obligations to other Pacific islands where those obligations are not currently present.

I would like to respond first by noting that the sudden influx of a large number of aliens into Guam by sea was an unforeseen circumstance that required the emergency deployment of INS resources at very short notice to a place where that level of resources had not previously been needed. As the INS has no office anywhere that is overstaffed or overbudgeted compared to the demands placed upon it to provide law enforcement or immigration services, I can assure you that the officers, attorneys and other personnel and resources detailed to Guam have been very sorely missed in their regular duty stations. I am sure that that is equally true of the Department of Justice Executive Office for Immigration Review's personnel detailed to Guam, and of the Coast Guard crews manning the patrol vessels and aircraft operating in Guam waters.

Clearly, the INS needs to be prepared to deal with unexpected immigration situations wherever in the United States they occur -- whether in Guam, South Florida, the Southwest Border, or (should S. 1052 become law) the CNMI -- and we do our best to plan for them. That is a different situation, however, than the introduction, on a schedule that is known in advance, of INS services and enforcement to a territory of the United States not previously served. That is a situation that can be anticipated and addressed with appropriate planning and budgeting with -- if sufficient lead time and resources are provided to the INS -- no need to cut back immigration services in other areas of the United States in order to serve the CNMI properly. In short, the fact that the recent emergency in Guam, and the proposal to extend the INA to the CNMI, both

involve nearby islands in the Pacific should not obscure the fact that they really are not comparable.

Second, I want to address any perception that the Administration's response to the Guam immigration situation has not been adequate. In response to the Guam influx, the INS worked closely with the White House, the National Security Council, the Departments of State and Defense, the Coast Guard, other components of the Department of Justice, and Guam authorities to devise and implement an effective interdiction and repatriation strategy. That strategy included the Coast Guard's deployment of several cutters and a C-130 search and rescue airplane. On land, the INS and the Executive Office of Immigration Review deployed substantial resources in Guam, and the U.S. Attorney for Guam and the Northern Mariana Islands has pursued numerous prosecutions of smugglers responsible for the influx.

As a result, the worst appears to be over and the situation has stabilized. Much work remains to be done in Guam, however, and we must remain vigilant against new attempts to target Guam for alien smuggling. An outstanding responsibility is to provide the funding necessary for the operation, including reimbursing the government of Guam. The President has proposed $19.4 million for this purpose. We hope the Congress provides this funding.

It also has been said that the INS' use of a facility on the island of Tinian in the CNMI to process Chinese aliens interdicted at sea near Guam is inconsistent with the Administration's support of extending the INA to the CNMI. Since May 1998, numerous boats, primarily stateless fishing vessels, attempting to reach Guam carrying Chinese nationals as cargo have either landed on that island or have been intercepted at sea by the Coast Guard. Most of the migrants were found amid deplorable conditions, overcrowded in rusting, dangerous vessels without lifeboats,

sanitation facilities and sufficient food and water.

In April of this year, after available detention space on Guam was filled by the sudden influx of seaborne migrants, the U.S. Department of Defense erected a camp on former World War II airfields on Tinian, an island that is only 90 miles from Guam. Approximately 500 migrants interdicted at sea were housed temporarily in the Tinian facility, where they were processed for repatriation to China. Each alien held on Tinian was screened to determine whether the alien had a credible fear of persecution if he or she were returned home. Those aliens who established a credible fear were transported to the U.S. mainland, placed in removal proceedings, and allowed to apply for asylum. The rest of the aliens were returned to China. We used Tinian again within the last month to process a boat with about 140 Chinese nationals aboard.

Although it is evident from my testimony and the previous record on this matter that the Administration and the CNMI government have serious differences of opinion with respect to the CNMI's immigration system, I want to take this opportunity to inform the Committee that the CNMI government was extremely cooperative and helpful with respect to the Tinian operation. The Department of Justice thanks them for their assistance.

More tangibly, on September 7 the INS entered into a reimbursement agreement with the U.S. Department of the Interior enabling the INS to reimburse the CNMI government for costs, primarily personnel expenses, it incurred in support of the Tinian operation in the amount of approximately $750,000. The INS has begun expeditious processing of the initial billings received from the CNMI, and we expect payments to begin very soon.

Mass alien smuggling by sea is a major immigration and national security threat to the

United States. The phenomenon has the capability to create emergency situations that can seriously harm and disrupt American communities, particularly those such as Guam that are especially vulnerable due to their small size, location or limited law enforcement resources. A vigorous program of Coast Guard interdiction at sea, with diversion of the aliens to locations where they can be more expeditiously processed for repatriation than otherwise might be the case, has proven to be an effective weapon that deters this type of illegal migration. Possible interdiction sites that could provide rapid repatriation capabilities are very few and far between in the Western Pacific. In the Guam crisis, the INS was able to use the nearby island of Tinian.

The Tinian operation was a short-term, emergency response to an emergency situation. The purpose was to process for rapid repatriation to their homeland an influx of exploited migrants who arrived amid dangerous conditions. The INS sought to do this in the most expeditious and humane way available, and in a way that did not further worsen the difficult situation already existing on Guam or encourage further smuggling voyages of this type. The treatment of the migrants, including giving them an opportunity to seek protection from persecution, was completely consistent with the obligations of the United States under international law.

Important as our interdiction concerns are, however, they are substantially outweighed by the urgent need to bring a workable, fair and just immigration system to an American commonwealth that lacks one. The usefulness of having a site for repatriation is not an argument in favor of not extending federal immigration law to the CNMI, any more than it would be an argument for exempting other border areas of the United States from the INA. Of all the facts I have described, there is one overarching fact that dictates our course: The CNMI is American

soil, and we must treat it as such. The Administration firmly believes that the values and interests of the United States, including the U.S. citizens of the CNMI, are best served by extending the rights, protections, and obligations the INA provides for aliens in other parts of the United States to those in the CNMI, with appropriate transition provisions.

Conclusion: S. 1052, With Certain Improvements, Should be Enacted Into Law

In conclusion, the Administration urges this Committee favorably to report, and the Congress promptly to enact, S. 1052 with the needed improvements. Again, we appreciate the invitation by the Committee to offer the views of the Administration on this bill. I will be pleased to answer any questions.